

K257BLAS

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

17 Cr. 563 (ER)

6 LOUIS MARTIN BLAZER,

7 Defendant.
-----x

8 New York, N.Y.
9 February 6, 2020
10 10:00 a.m.

11 sBefore:

12 HON. EDGARDO RAMOS
13 APPEARANCES

14 GEOFFREY S. BERMAN
15 United States Attorney for the
16 Southern District of New York
17 BY: ROBERT BOONE
18 ELI MARK
19 Assistant United States Attorneys

20 MARTIN DIETZ
21 Attorney for Defendant

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1 (In open court)

2 (Case called)

3 MR. BOONE: Good morning, your Honor. Robert Boone
4 for the government, and here with me at counsel table is AUSA
5 Eli Mark.

6 THE COURT: Good morning.

7 MR. DIETZ: Good morning, your Honor. Martin Dietz on
8 behalf of Louis Martin Blazer, and Mr. Blazer is seated to my
9 right.

10 THE COURT: And good morning to you all. This matter
11 is on for sentencing, and in preparation for today's
12 proceedings I have reviewed the following: I have reviewed the
13 presentence report that was last revised on February 5, 2020.
14 I take it the parties have all gotten a copy of the latest
15 version.

16 MR. DIETZ: Yes, your Honor.

17 THE COURT: And that report was prepared by U.S.
18 probation officer James Mullen, and it includes a
19 recommendation.

20 I have also reviewed the letter submitted by Mr. Dietz
21 filed on January 30 of this year, which includes letters
22 submitted by various of Mr. Blazer's family and friends and
23 business associates, and the government's letter dated January
24 30, 2020, in which it indicates its intention to move pursuant
25 to United States sentencing guideline 5K1.1.

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1 Is there anything else that I should have received or
2 reviewed, Mr. Boone?

3 MR. BOONE: No, your Honor.

4 THE COURT: Mr. Dietz?

5 MR. DIETZ: Your Honor, the only question I would have
6 is I'm not sure whether the Court actually received the letter
7 from the NCAA. I had received communications from the NCAA
8 that they had forwarded the Court a letter.

9 THE COURT: I have not received a letter from the
10 NCAA.

11 Mr. Boone, have you seen this letter?

12 MR. BOONE: I have seen it in the press. It was never
13 sent to our office.

14 THE COURT: OK. Mr. Dietz, do you have a copy of that
15 letter?

16 MR. DIETZ: I do, your Honor.

17 THE COURT: Do you want to hand it up.

18 OK. I have reviewed this letter. Anything else, Mr.
19 Dietz?

20 MR. DIETZ: No, your Honor. But I apologize. They
21 led me to believe it was sent directly to you.

22 THE COURT: It may have been. I have not seen it.
23 It's dated January 31, 2020, so I don't know when they put it
24 in the mail and whether it's wending its way through our mail
25 system in the building, but I have reviewed it. Anything else,

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1 Mr. Dietz?

2 MR. DIETZ: No, your Honor, I believe that's the
3 submissions.

4 THE COURT: Mr. Dietz, have you read the presentence
5 report and discussed it with your client?

6 MR. DIETZ: I have, your Honor.

7 THE COURT: And, Mr. Blazer, have you read the
8 presentence report and discussed it with Mr. Dietz?

9 THE DEFENDANT: I have, your Honor.

10 THE COURT: Are there any additional questions
11 regarding its factual accuracy?

12 MR. DIETZ: Nothing as it relates to the sentencing
13 guidelines, Judge. I believe Mr. Boone has a couple minor
14 factual corrections that he would like to address with the
15 Court, and we have no opposition to those.

16 THE COURT: Very well.

17 Mr. Boone?

18 MR. BOONE: Yes, your Honor, just a few --

19 THE COURT: We're referring to the February 5 version,
20 correct?

21 MR. BOONE: That's correct, your Honor.

22 THE COURT: OK.

23 MR. BOONE: So I just have a few comments that I would
24 like the Court to at least consider mostly for clarity's sake,
25 nothing particularly earth shattering.

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1 THE COURT: OK.

2 MR. BOONE: I am looking at what is numbered as
3 paragraph 10. If you notice, paragraphs 10 and 11 refer to
4 sentencings of Code and Dawkins, but there is no reference to
5 the sentencing that your Honor actually imposed pursuant to the
6 trial we've had in 2019. So, my suggestion is we could add a
7 sentence to make that clear, something along the lines of the
8 fact that for Code he was also convicted at trial before your
9 Honor of Count One in the indictment S1 17 Cr. 684 and was
10 subsequently sentenced by your Honor to three months'
11 imprisonment on that count, to be served consecutively with the
12 term of imprisonment imposed by Judge Kaplan in the case 17 Cr.
13 686.

14 THE COURT: OK.

15 MR. BOONE: Similarly, your Honor, for Christian
16 Dawkins we would suggest having a sentence that says something
17 to the effect that Dawkins was also convicted following a trial
18 before your Honor to Counts One and Two of S1 17 Cr. 684 and
19 was subsequently sentenced by your Honor to a term of
20 imprisonment of one year and one day, to run concurrently with
21 the terms of imprisonment imposed relating to case 17 Cr. 686.

22 THE COURT: Very well.

23 I take it you have no objection, Mr. Dietz.

24 MR. DIETZ: No objection.

25 THE COURT: OK. Mr. Boone?

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1 MR. BOONE: Another more minor correction. If you
2 notice, paragraph 13 discusses the sentencing of defendant
3 Shawn Luchelle. It looks to me that paragraph 17 is the exact
4 same sentence, so my suggestion would be to remove one of those
5 paragraphs.

6 THE COURT: Let's take out 17. OK.

7 MR. BOONE: Your Honor, perhaps a slightly bigger
8 suggestion is if you look at paragraphs 21 through 53, they
9 attempt to describe some of Blazer's cooperation. In reading
10 it, it's not clear from the reading that it actually is
11 proactive cooperation. It sort of reads as if it's his actual
12 offense conduct. I have sort of two ways that might be able to
13 cure this. One would be to simply remove those paragraphs,
14 paragraphs 21 through 53, and then his offense conduct would
15 begin with paragraph 54 which discusses the misappropriation of
16 client funds and his own payment of players, which is what he
17 was convicted of.

18 Alternatively, we could also simply insert a sentence
19 likely before say paragraph 42 that just makes it clear that at
20 the direction of law enforcement Blazer committed the following
21 actions among others pursuant to his cooperation with the
22 government, and then he goes on to describe some of that
23 cooperation.

24 THE COURT: Before paragraph 42?

25 MR. BOONE: Correct.

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1 THE COURT: And so you want to say that again. At the
2 direction of law enforcement --

3 MR. BOONE: -- Blazer committed the following actions,
4 among others, pursuant to his cooperation with the government.

5 THE COURT: Any objection to that, Mr. Dietz?

6 MR. DIETZ: No, your Honor.

7 THE COURT: I am more comfortable with that second
8 suggestion.

9 MR. BOONE: Understood.

10 THE COURT: What else, Mr. Boone?

11 MR. BOONE: On paragraph 54 -- this is very minor --
12 it reads Blazer made payments to numerous -- I'm sorry, I can
13 wait.

14 THE COURT: I'm there.

15 MR. BOONE: Blazer made payments to numerous college
16 athletes while they were student athletes to pursue them.

17 I think the author meant to say to persuade them to
18 hire him.

19 THE COURT: OK.

20 MR. BOONE: Next, paragraph 55, first sentence, I
21 believe the author meant that from between 2009 and 2013 Blazer
22 acted as a financial advisor to professional athletes.

23 THE COURT: OK.

24 MR. BOONE: The next sentence -- it might be helpful
25 for me just to read what I think sort of the next two sentences

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1 should say. I think there is some sort of wording that's a
2 little off.

3 THE COURT: Let me just read them first.

4 MR. BOONE: OK.

5 THE COURT: OK.

6 MR. BOONE: So, speaking broadly, I think the issue is
7 it's not sort of clearly defining the misappropriation. My
8 suggestion for the second sentence would be the following:
9 "During that time period, Blazer misappropriated \$2.3 million
10 of his clients' money by investing their money in various movie
11 and music ventures without their authorization."

12 THE COURT: OK.

13 MR. BOONE: And then the only other correction on this
14 section would be for that next sentence, which is the third
15 sentence. I would have it begin with "For example, Blazer
16 pitched a movie project to an athlete."

17 THE COURT: Any objection, Mr. Dietz?

18 MR. DIETZ: No, your Honor.

19 THE COURT: OK.

20 MR. BOONE: Another thing I want to point out,
21 although I think -- I'm sorry. Let me just find my place. I
22 think it's more something I want to point out but not
23 necessarily suggest a correction. It's a part of the paragraph
24 where the probation officer is writing his justification for
25 his recommendation, so it's more sort of his editorializing.

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1 But I'm looking at page 28.

2 THE COURT: OK.

3 MR. BOONE: Under the heading justification. And this
4 is really more to make the record clear, although it's apparent
5 in the submissions of the parties. The first sentence says
6 that Blazer paid NCAA Division 1 basketball players. He didn't
7 pay basketball players unless it was at the direction of the
8 government. He was paying other college athletes. They were
9 actually football players he testified to.

10 THE COURT: OK.

11 MR. BOONE: And then on the third paragraph, sort of
12 the middle of the paragraph, it says "as a result of two-year
13 extensive and proactive cooperation ..." his cooperation was
14 longer than two years.

15 THE COURT: What paragraph?

16 MR. BOONE: In the third paragraph under the
17 justification heading.

18 THE COURT: How many years?

19 MR. BOONE: At least three years before charging, and
20 then obviously he continued to help at the trial.

21 THE COURT: OK.

22 MR. BOONE: And then lastly, your Honor, another sort
23 of more minor semantic recommendation, this actually goes back
24 to the beginning. I'm looking at paragraph 6.

25 THE COURT: OK.

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1 MR. BOONE: And let me know if you want me to read it.
2 I think it's just missing some words. It refers to payments
3 without sort of saying what those payments are.

4 THE COURT: OK.

5 MR. BOONE: So what I would suggest is after it says
6 "Blazer as a financial advisor or business manager" I would add
7 the following: "made payments to student athletes at various
8 universities in exchange for the student athletes' agreement to
9 retain Blazer as a financial advisor or business manager," and
10 then I would say "which payments were concealed."

11 THE COURT: OK. "In exchange for their agreement to
12 retain Blazer as a financial advisor" --

13 MR. BOONE: "Or business manager."

14 THE COURT: OK.

15 MR. BOONE: That's it.

16 THE COURT: OK. Thank you.

17 And I take it, Mr. Dietz, you have no objections to
18 any of those changes.

19 MR. DIETZ: That's correct, your Honor.

20 THE COURT: OK. Although I am not required to impose
21 a sentence within the sentencing range calculated under the
22 guidelines, I am required to consider the guidelines in
23 imposing sentence, and in order to do so I do need to calculate
24 the applicable sentencing range. Does either side object to
25 the calculation set forth in paragraphs 63 to 75 of the PSR?

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1 MR. BOONE: Not the government.

2 THE COURT: Actually because of the new one it's at
3 paragraphs 68 through 81.

4 Mr. Dietz, any objection?

5 MR. DIETZ: No, your Honor.

6 THE COURT: Very well. I have reviewed the
7 calculation, and I agree with the probation probation's
8 calculation. Accordingly, I find that the total offense level
9 for Counts One, Two, Four and Five is 26, and I further find
10 that because Mr. Blazer has no prior convictions he is in
11 Criminal History Category I, and that yields a sentencing
12 guideline of 63 to 78 months, with a consecutive 24 months on
13 Count Three.

14 And, with that, Mr. Boone, did you wish to be heard
15 prior to the imposition of sentence?

16 MR. BOONE: Yes, your Honor, briefly.

17 Your Honor, I understand we filed a fairly detailed
18 5K, so I will try not to repeat much of what was said there.
19 Just a few things I do want to highlight for your Honor.

20 First, I think it's worth noting that Mr. Blazer found
21 himself in this position in terms of cooperation because he
22 made efforts to seek cooperation. He is an individual who was
23 not charged with a crime at the time he decided to cooperate
24 but in fact had learned of a potential investigation by our
25 office into misconduct he committed, and he on his own had

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1 requested a meeting with the government and a meeting to
2 confess his crimes to the government fully. And he did that.
3 And, as your Honor is aware, that is not always the case with
4 cooperators. It is perhaps more often the case that an
5 individual has been charged with a crime, and after charges are
6 brought at some point later then decides to cooperate with the
7 government. Mr. Blazer stands out for that reason.

8 THE COURT: Let me ask you this, Mr. Boone, because
9 that was not clear to me from the reading of the PSR. Where
10 was he in connection with the SEC investigation at the time
11 that he made --

12 MR. BOONE: At the time charges had not been brought
13 by the SEC, but he was aware that there was an investigation.
14 He had gotten subpoenas asking for documents relating to his
15 business and what ultimately was shown to be a misappropriation
16 of client funds. He had retained an attorney to help him deal
17 with communications with the SEC. He had met with the SEC
18 regarding their investigation. And as we made clear and as he
19 testified to, he had lied in his meetings with them.

20 After that his attorney then learned that the U.S.
21 Attorney's Office also was interested in his conduct relating
22 to the misappropriation of client funds, and it was at that
23 point that he asked his attorney to set up a meeting with both
24 the SEC and the U.S. Attorney's office to come clean about his
25 conduct including his past lies to the SEC.

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1 THE COURT: And the government at that time -- and by
2 the government I'm including both the SEC and the U.S.
3 Attorney's Office -- was it this office or the office in
4 Pittsburgh?

5 MR. BOONE: It was the New York SEC office, New York
6 City.

7 THE COURT: And also the U.S. Attorney's Office?

8 MR. BOONE: Yes, our office here, yes.

9 THE COURT: OK. And am I correct that at that time
10 the only wrongdoing of which they were aware was Mr. Blazer's
11 misappropriation with respect to his financial advising
12 business.

13 MR. BOONE: That's correct, your Honor.

14 THE COURT: OK.

15 MR. BOONE: And that leads to my next point, which is
16 that not only did Mr. Blazer come in on his own to confess, he
17 also volunteered information he believed that showed misconduct
18 by him, and he also volunteered his guidance in helping with
19 the government discover similar misconduct by others. What I'm
20 talking about there is the NCAA related conduct, his payment of
21 players in exchange for convincing them to retain him once they
22 become professional athletes. That was not an investigation
23 that the government had ongoing. He was the one who informed
24 us of his conduct that led us opening an investigation into
25 whether other individuals were committing similar conduct. And

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1 so you're correct in separating the fact that what he initially
2 came to talk about and what the government knew about was
3 really separate from what ultimately became his cooperation.

4 THE COURT: And am I correct that -- well, I assume
5 that your office and the SEC investigated the misappropriation
6 with which he was charged. Am I correct that the monies that
7 he misappropriated went at least substantially exclusively, if
8 not exclusively, to these failed ventures, these failed media
9 ventures.

10 MR. BOONE: Correct, your Honor. None of the money
11 quote unquote went into Mr. Blazer's pocket per se. The money
12 either went to these failed ventures -- there was two movie
13 ventures and a music venture -- or when victims learned that
14 their money ha been moved without their permission and then
15 wanted their money back, Blazer then moved other clients' money
16 to pay them back. So that encompassed that conduct.

17 THE COURT: And that totaled approximately what? 2.1?
18 2.3?

19 MR. BOONE: \$2.35 million in terms of total money
20 misappropriated.

21 THE COURT: Did any of those movies ever get made?

22 MR. BOONE: They did. The Mafia movie is out. It's
23 available at Amazon. The sibling movie I'm not so sure about.
24 Maybe Mr. Blazer knows.

25 So, your Honor, as I was saying, Mr. Blazer offered

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1 his services to assist the government in starting the
2 investigation that ultimately resulted in the conviction of ten
3 defendants, and he was very much open to making recordings
4 against individuals he knew and attempting to make inroads with
5 individuals he didn't know and make recordings against them as
6 well. And, as your Honor knows, the amount of recordings was
7 numerous, and the amount of time it took him to make the
8 recordings was extensive.

9 At no point in time, to defendant's credit, did he
10 have any hesitation about making recordings or had any
11 hesitation about essentially flying around the country in an
12 attempt to make recordings. As we noted in our submission, and
13 as Mr. Blazer would testify at trial, for the early part of the
14 investigation Mr. Blazer was flying around at his own expense,
15 and he was not given a promise of reimbursement for his funds
16 to travel. He accepted that at any rate because he did want to
17 cooperate, and I think that also is a credit to him and shows
18 the eagerness of his cooperation.

19 And as we point out in our submission, he did all this
20 while maintaining a job. His job was obviously not to fly
21 around the country making recordings. He has employment, he
22 has a family he has to take care of, and he maintained his
23 commitment both to his job and to his family despite the fact
24 that he was asked by us to travel many times, often times on
25 short notice at his own expense.

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1 And, your Honor, one thing that's not in our
2 submission that perhaps may be obvious but I still want to
3 point out, is that, you know, the act of making recordings like
4 Mr. Blazer was making is one that can cause a lot of stress for
5 the person making them. He is obviously doing this covertly;
6 there is always the fear that person you are recording may find
7 out. So, it is not of a light task to be asked to make
8 numerous phone calls and recordings against individuals and
9 constantly putting yourself in the position where you could be
10 exposed as someone who is cooperating against an individual,
11 and there is always a potential that harm could occur.

12 It's particularly worth noting that in the beginning
13 of the investigation, before the F.B.I.'s involvement, when
14 Mr. Blazer was flying around the country to make recordings, he
15 was going by himself. It was not as if there was sort of a
16 team of agents in a van next to him in case things went awry.
17 He was on his own making these recordings, which again I think
18 adds to the stress level of his cooperation and shows his
19 commitment to his cooperation.

20 Your Honor obviously knows what the end result was of
21 Mr. Blazer's cooperation. As we've stated in our submission,
22 it's one of the biggest prosecutions, investigations of
23 corruption in college athletics. That case simply doesn't get
24 made without Marty Blazer's cooperation. And I think it's also
25 worth noting that given the news worthiness of the cases that

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were ultimately brought, Mr. Blazer has been put forth into the public eye as a public figure of sorts. There has been a profile of him in the Wall Street Journal. There have been articles of him in Sports Illustrated. We learned this morning apparently there is going to be an HBO documentary about the cases which I suspect will mention Mr. Blazer's cooperation. So, his cooperation is known, and that's something he will have to live with for the rest of his life. And when the case initially was charged, there were obviously attempts by the media to interview him and his family members, neighbors and friends of that nature, further outing his cooperation and I am sure causing sort of further stress to Mr. Blazer. And again his cooperation as it relates to the NCAA cases was proactive; it didn't stem from him sort of being involved in an ongoing cooperation. It stemmed from him wanting to help with the investigation.

So, for all those reasons, your Honor, we do move under 5K1.1, we do want your Honor to consider and take seriously -- as I'm sure your Honor will -- Mr. Blazer's cooperation.

And just to add, throughout all of this Mr. Blazer has been nothing but courteous to all the law enforcement officers involved. He has never complained about the amount of cooperation that was required of him or the fact that he was given no indication of when his cooperation would end. And it

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1 did in fact continue for several years, and he didn't express
2 any hesitation in continuing that, again, in the government's
3 view, all to his credit. We ask that all of this be taken into
4 consideration when sentencing Mr. Blazer.

5 THE COURT: Thank you, Mr. Boone.

6 Mr. Dietz, did you wish to be heard?

7 MR. DIETZ: Very briefly, your Honor. Judge,
8 Mr. Boone has described Mr. Blazer's cooperation, and there is
9 no way I can possibly do it any better at this point. The
10 Court sat through the trials; you heard Mr. Blazer testify.

11 I will just confirm with the government, I assure you
12 I read the government's sentencing submission, and I thought,
13 wow, people are going to think that we coordinated our
14 sentencing submissions. I can assure the Court we did not. I
15 have been practicing federal criminal law for over 20 years,
16 and I have represented cooperators, and I don't know if I've
17 ever seen or heard of a case that I've been personally involved
18 in which has had this extensive cooperation.

19 Judge, one thing I want to point. Mr. Boone
20 referenced the SEC investigation, and it is true that
21 Mr. Blazer did initially hire counsel in that case, and he had
22 counsel, however, he quickly learned he couldn't afford
23 counsel, and he ultimately proceeded to the jury in that case,
24 including the negotiation and an agreement to a consent
25 judgment and consent order as a pro se litigant. He

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1 represented himself. I'm involved in this case because I am a
2 friend of Marty Blazer. Maybe he got lucky initially and has a
3 friend who does federal criminal defense work, and he came to
4 me. He initially did not come to me because he was
5 embarrassed. He hired another attorney. He had an attorney
6 representing him in the criminal matter who had no experience
7 in federal court.

8 This is going to the point that I want the Court to
9 understand -- and I think Mr. Boone said it and I said it --
10 Mr. Blazer did not personally financially benefit from his
11 crimes. He did what he did and he absolutely accepts
12 responsibility for it, but he wasn't buying cars, wasn't buying
13 houses, wasn't buying assets, wasn't securing a lavish
14 lifestyle for himself. He screwed up. He took clients money
15 to invest, and when the money ran out he took more clients'
16 money to invest. In fact, he actually paid some of his clients
17 back with other client's money. So, while he misappropriated
18 2.3, I think the actual loss to his clients has been more
19 around 1.8. And he has agreed, and he has a settlement
20 agreement with the SEC on that.

21 THE COURT: What are the financial requirements of
22 that agreement? And where is Mr. Blazer with respect to those
23 requirements?

24 MR. DIETZ: I believe it's \$1.8 million consent
25 judgment. The SEC has taken no action on it until this case is

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1 over. Frankly, Judge, I believe that his wages will be
2 garnished after sentencing. That's my understanding. I do not
3 represent him in the SEC matter, but frankly that was resolved
4 before I ever got involved in this case, so it's been quiet.

5 THE COURT: OK.

6 MR. DIETZ: Judge, I know the Court's job is to
7 sentence Mr. Blazer today, and I would ask the court to
8 sentence all of Marty Blazer, not just the Marty Blazer who
9 committed these crimes, but the Marty Blazer who cooperated,
10 the Marty Blazer who has not been described in the media, the
11 family man Marty Blazer.

12 Judge, his wife Trisha is here today in the courtroom
13 in support of him. She has submitted a letter to the Court.
14 His cooperation has had substantial impact on his family.
15 Today for example, today is his 14 year old daughter's
16 birthday, and he is standing here in federal court to be
17 sentenced for committing federal felonies. It's affecting him.
18 He has told me how disappointed in himself that he is standing
19 here in federal court instead of home.

20 I don't want to rehash everything that's in my
21 sentencing information because I have included a lot of
22 information, Judge. I would just ask the Court to consider the
23 overall nature of who Marty Blazer is, his cooperation with the
24 government. And, Judge, he still -- as the NCAA letter
25 suggests, he has had some reservations in his cooperation with

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1 the NCAA about disclosing certain things that are part of this
2 federal criminal investigation. After he is sentenced, after
3 these cases are closed, he intends to continue fully
4 cooperating with the NCAA.

5 Last week, your Honor, I was contacted by a prosecutor
6 in North Carolina. There is a prosecution currently based on
7 allegations that occurred at the University of North Carolina.
8 A defendant is being prosecuted, and I got a phone call if
9 Marty Blazer would be willing to testify in that case. That is
10 the end of February. He is going to cooperate in that case as
11 well.

12 So, I can tell you, Judge, Marty Blazer -- I hear the
13 phrase redemption a lot in the federal criminal arena. He is
14 doing everything he can from the point of making these mistakes
15 to make a positive impact in this world. He has tried to help
16 the government. He is working hard, he is providing for his
17 family. He is doing things the right way, Judge, and for all
18 the reasons that Mr. Boone has advocated, for the reasons I've
19 advocated in my sentencing submission, I would ask the Court to
20 impose a noncustodial sentence.

21 THE COURT: Thank you.

22 Mr. Boone, as I recall from the sentencing of
23 Mr. Code and Dawkins, I have not imposed restitution on those
24 because the NCAA or the universities haven't requested
25 restitution. Am I misremembering that?

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1 MR. BOONE: That's correct, your Honor.

2 THE COURT: What is the government's position on
3 either restitution or forfeiture with respect to Mr. Blazer?

4 MR. BOONE: So, your Honor, with respect to
5 restitution, as defense counsel pointed out, and as also
6 pointed out in the PSR paragraph 118, Judge Oetken has issued
7 an order against Mr. Blazer for his conduct relating to
8 misappropriation of client funds that requires him to pay -- I
9 have it here -- requires him to pay about \$1,558,647 as well a
10 fee associated with interest and a fine.

11 I have talked to the SEC attorneys handling this case.
12 My understanding is that the money that Mr. Blazer gives to the
13 SEC pursuant to that order will then ultimately go to the
14 victims who are part of his misappropriation. Given that the
15 victims will be -- or there is an order in place for them to be
16 made whole from his misconduct, we are not seeking restitution
17 in light of the fact that the victims already are going to be
18 made whole through a court order of Judge Oetken's. And that's
19 16 cv 3384, for the record, SEC v. Martin Blazer.

20 THE COURT: OK.

21 MR. DIETZ: In terms of forfeiture, your Honor, the
22 parties do disagree as to that, as the government is seeking
23 forfeiture. The forfeiture amount we are seeking is the amount
24 we reference in our 5K as a total amount of money
25 misappropriated by Mr. Blazer, and that's \$2,350,000.

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1 We understand that ultimately Mr. Blazer himself did
2 not profit from the scheme, but we do believe that Second
3 Circuit law makes clear defendant is liable for the full amount
4 of proceeds he controlled, without regard to whether he
5 personally obtained them or transferred them to others.

6 So, in the government's view the amount of money he
7 controlled and controlled improperly was the money he moved
8 without authorization from clients' accounts either to the
9 music or movie ventures, or moved to essentially cover up the
10 fraud by moving money from sort of Client B to Client in an
11 attempt to make client A whole for his initial appropriation.

12 THE COURT: Let me ask you a question, Mr. Boone.
13 Victims are not entitled to more restitution than they lost,
14 but ought I not in an abundance of caution enter an order of
15 restitution for the amount lost by the victims?

16 MR. BOONE: Your Honor, we wouldn't necessarily object
17 to that. I'm not sure sort of what would need to be done on
18 the back end to make sure there is not sort of a double
19 counting for the victims. I think it would be helpful, if
20 that's your Honor's desire, to just to make it clear in the
21 record the fact that your ultimate goal is not to have victims
22 have double the money. We wouldn't object to your Honor doing
23 that.

24 THE COURT: And what is that amount? I mean is that
25 from paragraph 118?

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1 MR. BOONE: It is. And it's also -- I just want to
2 look at our actual submission, and we discuss it there as well.

3 THE COURT: Wouldn't it be 2.3?

4 MR. BOONE: Well, if you're talking about restitution,
5 no, because some clients were given money back, so that 1.5 now
6 gives credit for money that was given back to individuals.

7 THE COURT: We don't have to like do a calculation
8 today, because we have some time even after I impose sentence.
9 I just want to make sure that we don't lose track of that.
10 Because I do believe that under the Act, the Mandatory
11 Restitution Act, I am required to impose restitution, but again
12 obviously to the extent that the victims are being compensated
13 through an SEC proceeding, they are not entitled to more than
14 they lost than perhaps some interest.

15 MR. BOONE: Correct.

16 THE COURT: So, why don't you get me some figures.

17 MR. BOONE: I can. And, your Honor, if you look at
18 page 5 of our 5K letter under the heading "Blazer's Loss Amount
19 for Securities Fraud," there we calculated the net
20 misappropriation amount to be approximately \$1,560, which is
21 essentially what the SEC found.

22 THE COURT: You mean 1 million.

23 MR. BOONE: Sorry, \$1,560,000.

24 THE COURT: OK. OK. Thank you.

25 Mr. Blazer, you have an absolute right to address the

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1 Court before I impose sentence. Is there anything that you
2 wanted me to know?

3 THE DEFENDANT: Would it be OK?

4 THE COURT: Absolutely. You can absolutely read, but
5 I would simply ask you because when people read they tend to be
6 a little nervous and they speak fast, so if I could ask you to
7 do it slowly.

8 THE DEFENDANT: I will. I will, your Honor.

9 THE COURT: You can sit down, by the way. Just speak
10 directly into the microphone.

11 THE DEFENDANT: There is no justification or excuse
12 for my actions. I take 100 percent responsibility for every
13 terrible decision I made that brought me here today. I know an
14 apology to the individuals I harmed will never be enough, but I
15 am deeply sorry. These guys trusted me to protect them from
16 people who would do what I did to them, and I betrayed their
17 trust. There hasn't been a moment -- and there will never be a
18 moment in my life -- that I don't deeply regret my actions and
19 know that this shame will forever live with me. I am truly so
20 very sorry to everyone I hurt, and I wish I could go back in
21 time and stop myself from making those decisions.

22 I want to apologize to my wife and kids for putting
23 them through this. Trisha, my wife, has had to endure so much
24 over the past eight years or so because of my selfish and
25 arrogant actions. This has been harder on her than anyone

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1 else, and it breaks my heart. She did nothing to deserve this
2 and yet stood by me and held our family together. I will never
3 be able to express how sorry I am I was not a better person for
4 their sake. I strive every day to be more deserving of their
5 love and admiration.

6 I owe a tremendous debt of gratitude to the U.S.
7 Attorney's Office and the F.B.I. for giving me the opportunity
8 to cooperate. I have the highest regard for who they are and
9 what they do. I was always treated with fairness,
10 professionalism and respect by everyone I encountered. I
11 appreciate more than I can ever say the chance they gave me to
12 do something positive.

13 I apologize to this Court as well, your Honor, for
14 having to deal with me in this capacity today. For you I
15 realize weighing all of this information takes tremendous time
16 and consideration.

17 Your Honor, I am sure countless individuals stand
18 before you and plead that if you give them the chance they
19 promise to do better. No question I have made terrible
20 mistakes for which there is no excuse or justification. In the
21 near six years since I took ownership of those mistakes,
22 however, I believe I have done better as a result of the chance
23 afforded to me by the U.S. Attorney. If granted another chance
24 by you here today, your Honor, I promise you will never again
25 see me stand before you under similar circumstances, and I will

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1 use the lessons learned from my mistakes to continue on the
2 right path. Thank you.

3 THE COURT: Thank you, Mr. Blazer. I want in the
4 first instance to note that I grant the government's motion
5 pursuant to 5K1.1, and in deciding what sentence to impose, in
6 addition to the sentencing guidelines, I have considered all of
7 the factors set forth in Section 3553(a) of Title 18 of the
8 United States Code, including as most relevant to this case the
9 nature and circumstances of the offense and Mr. Blazer's
10 history and characteristics. I have considered the need for
11 the sentence imposed to reflect the seriousness of the offense,
12 promote respect for the law, provide a just punishment for the
13 offense, to afford adequate deterrence to criminal conduct, to
14 protect the public from further crimes, and I have also
15 considered the need -- particularly important in this case --
16 to avoid unwarranted sentencing disparities among similarly
17 situated defendants, and to provide restitution to any victims
18 of the offense. And because the government has so requested,
19 and I have granted, I have also considered the factors set
20 forth in United States Sentencing Guidelines, Section 5K1.1
21 namely my evaluation of the significance and usefulness of
22 Mr. Blazer's cooperation, taking into account the government
23 assessment, Mr. Blazer's truthfulness, completeness and
24 reliability in his testimony, the nature and extent of his
25 assistance, any injury or risk of danger to Mr. Blazer or his

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1 family resulting from his cooperation and the timeliness of his
2 assistance, and having considered all of these factors it is my
3 intention to impose a sentence of time served on each count of
4 conviction, to be followed by one year of supervised release.

5 I will not impose a fine, as I find that Mr. Blazer
6 will not be able to pay a fine as a result of the other
7 financial obligations that he has incurred in connection with
8 his actions.

9 I will also impose the mandatory special assessment of
10 \$500, which shall be due immediately; restitution in the amount
11 of \$1,560,000 -- if that amount is inaccurate for some reason,
12 Mr. Boone, I would ask that you correct me in the coming
13 weeks -- and forfeiture in the amount of \$2.35 million.

14 I believe this sentence is sufficient but not greater
15 than necessary to comply with the purposes of sentencing set
16 forth in Section 3553(a)(2) for the following reasons:

17 I begin, as I must note, by noting that the conduct
18 for which Mr. Blazer has been convicted is very serious
19 conduct. He is a person obviously who knows better. He is a
20 sophisticated financial professional in whom individuals repose
21 their trust and their finances. You know, as I read the
22 letters that were submitted on his behalf -- and I absolutely
23 credit the sincerity of each of the individuals who submitted
24 these letters. I read with particular care the letter
25 submitted by Mr. Blazer's wife and children, and I am able to

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1 determine and conclude that not only did he know better, he
2 taught his family to know better. He was raised better. So,
3 it is a matter of great seriousness with which I take the
4 conduct for which he was convicted.

5 Obviously, I understand that he did that and that
6 money did not go directly into his pocket, but they were
7 investments that he hoped would get him additional funds. So
8 although there was a little wrinkle there in terms of the
9 typical scheme of this type that we see -- it's not your
10 classic pyramid scheme -- it is no less serious at least to my
11 way of thinking.

12 With respect to the NCAA violations, again, this is I
13 think the last of the individuals who will be sentenced in
14 connection with this series of prosecutions. There has been a
15 lot written and said about whether or not it is appropriate to
16 pay college players. There is some suggestion that history is
17 moving in the direction of paying college players or providing
18 them with some financial support during the time that they play
19 for universities. However, it is also the case that the
20 individuals that were prosecuted and convicted knew very well
21 that there were rules that had to be followed. They knowingly
22 and voluntarily and willfully broke those rules, and those
23 rules as it turns out were also a violation of federal
24 statutes. And while they were also serious crimes -- indeed
25 they were felonies -- to be sure, they were not the worst of

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1 crimes. They did not involve drugs. They did not involve
2 violence. They did not involve guns. It's for that reason I
3 believe that myself and the other judges who have had occasion
4 to sentence individuals that have been caught up in this
5 investigation, the sentences that have been imposed have been
6 relatively -- at least for this courthouse -- short. I believe
7 that my sentence of Mr. Dawkins to one year and one day is the
8 longest sentence that has been received by the individuals
9 involved in these investigations. But I believe sincerely that
10 the convictions were well deserved, and there are a lot of
11 consequences that come from being convicted of a felony in
12 federal court.

13 So, I take all of that into consideration, and as
14 Mr. Dietz correctly noted I am required by the applicable
15 statutes and sentencing guidelines to consider the entirety of
16 Mr. Blazer's life, to consider both sides of the ledger, and
17 certainly there is much to commend Mr. Blazer for.

18 Let me speak first to the cooperation he provided. He
19 is an unusual cooperator, in my experience -- and I have been
20 around even longer than Mr. Dietz -- someone who not only
21 provided information, that sort of came in off the street, so
22 to speak, to provide information, but then who engaged in
23 proactive cooperation for as long as he did and basically out
24 of his own pocket. That is unusual, and obviously he is to be
25 commended for going all in once he decided that it was

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1 important for him to stop his own criminal activity and then
2 cooperate with the government in the prosecution of others who
3 continued to engage in illegal activity.

4 So, obviously that is a very important part of what I
5 am required to consider when we sentence under Section 5K1.1.
6 As part of his cooperation Mr. Blazer testified before me at
7 the trial of Mrs. Code and Dawkins. I listened very carefully
8 to his testimony, as he was a very important part of that
9 prosecution, and I credited his testimony as obviously the jury
10 did.

11 As Mr. Boone noted, Mr. Blazer also agreed to
12 surreptitiously record others in the course of his cooperation,
13 and that is activity which implicitly puts someone in a very
14 precarious position, so all of that gets taken into
15 consideration.

16 As I indicated, I read the letters very carefully, and
17 I have no doubt that, first of all, Mr. Blazer is a good father
18 who has always been there for his children. He is an
19 individual who has always worked, and continues to work, and
20 will have substantial financial obligations going forward.
21 However, I do not doubt that he will continue to provide for
22 his family as best he can.

23 I also do not doubt -- turning to the deterrence
24 portion of the statutes -- that with respect to specific
25 deterrence, that Mr. Blazer will not commit another federal

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1 offense. I believe him when he tells me that I will not see
2 him again at least not under these circumstances, so there is
3 no reason for me to believe that there is any term of
4 incarceration that is necessary in order to effect specific
5 deterrence.

6 With all of that, does counsel know of any legal
7 reason, other than what has already been argued, as to why I
8 should not impose the sentence that I have indicated?

9 Mr. Boone?

10 MR. BOONE: No, your Honor.

11 THE COURT: Mr. Dietz?

12 MR. DIETZ: No, your Honor.

13 THE COURT: In that event, it is the judgment of the
14 Court that Mr. Blazer be sentenced to time served on each of
15 the five counts and one year of supervised release on each
16 count, each of which is to be served concurrently. The
17 standard conditions of supervised release will be imposed as
18 well as the following special and mandatory conditions. The
19 mandatory conditions are that you not commit another federal,
20 state or local crime, that you not unlawfully possess a
21 controlled substance and that you must refrain from the
22 unlawful use ever a controlled substance. You must submit to a
23 drug test within 15 days and at least two drug tests thereafter
24 as determined by probation. You must cooperate in the
25 collection of DNA as directed by probation.

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1 The special conditions are that you provide the
2 probation officer with access to any requested financial
3 information, and that you not incur new credit charges or open
4 additional lines of credit without the approval of the
5 probation office unless you are in compliance with the
6 installment payment schedule.

7 You are required to pay the mandatory special
8 assessment of \$100 on each of the counts of conviction for a
9 total of \$500; restitution in the amount of \$1,560,000; and I
10 note for the record and will indicate in the judgment of
11 conviction that I understand that there is a separate SEC
12 agreement pursuant to which Mr. Blazer agreed to provide the
13 restitution to the victims of the scheme, and that is not the
14 intention of this Court to provide the victims with any more
15 restitution than that to which they are entitled. That is to
16 say they are not entitled to double the amount of restitution
17 as a result of both the SEC and the U.S. Attorney's office
18 investigations.

19 I will also enter an order of forfeiture in the amount
20 of \$2.35 million. As I indicated previously, I will not impose
21 a fine, as I find that Mr. Blazer will not be able to pay a
22 fine as a result of the financial obligations that I have just
23 discussed.

24 Are there any open counts or any underlying
25 indictments?

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1 MR. BOONE: No, your Honor, but in an abundance of
2 caution, we would move to dismiss those.

3 THE COURT: That application is granted. That
4 constitutes the sentence of the Court.

5 Mr. Blazer, you actually have a right to appeal the
6 sentence, however, the time within which to do that is very,
7 very limited. So, Mr. Dietz, will you assure me that you will
8 promptly and thoroughly discuss with Mr. Blazer his right of
9 appeal?

10 MR. DIETZ: I will.

11 THE COURT: And Mr. Boone -- rather, Mr. Dietz, do you
12 ever any other applications?

13 MR. DIETZ: Not at this time, your Honor.

14 THE COURT: Mr. Boone?

15 MR. BOONE: No, your Honor.

16 THE COURT: In that event, that is the sentence of the
17 Court. Unless there is anything further, we are adjourned.

18 And, Mr. Blazer, good luck to you, sir.

19 THE DEFENDANT: Thank you, your Honor.

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